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IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

SCANDINAVIAN-AMERICAN BANK,
a Corporation,

and Appellant,

vs.

R. L. SABIN, Trustee of the Estate of
D. Sondheim, Bankrupt,

and Appellee,

In the Matter of D. Sondheim, Bankrupt.

PETITION FOR REVISION

Under Section 24b of the Act of Congress Approved
July 1, 1898, to Revise a certain Order of the
District Court of the United States for the Dis-
trict of Oregon; and

TRANSCRIPT OF RECORD.

Upon Appeal from the District Court of the United
States for the District of Oregon.

JUN 17 1915

F. D. Monckton,
Clerk.



No. _____

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*In the United States Circuit Court of Appeals,
for the Ninth Circuit.*

SCANDINAVIAN-AMERICAN BANK,
a Corporation,

Petitioner and Appellant,

vs.

R. L. SABIN, Trustee of the Estate of
D. Sondheim, Bankrupt,

Respondent and Appellee,

In the Matter of D. Sondheim, Bankrupt.

Names and Addresses of the Attorneys of Record:

Sidney J. Graham, Yeon Building, Portland,
Oregon, for Appellant.

Sidney Teiser, Morgan Building, Portland, Ore-
gon, for the Appellee.

**IN THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT.**

In the Matter of	}	PETITION FOR REVISION
D. SONDEHEIM,		
Bankrupt.		
SCANDINAVIAN - AMERICAN	}	
BANK, a Corporation,		
Petitioner,		
vs.		
R. L. SABIN,	}	
Trustee.		

TO THE HONORABLE JUDGES of the United States Circuit Court of Appeals for the Ninth Circuit:

Comes now the Scandinavian-American Bank, a banking corporation organized and existing under and by virtue of the laws of the State of Oregon, with its principal place of business in the City of Portland, and complaining of the order and decree made and rendered on May 17, 1915, against this petitioner by the Hon. Robert S. Bean, Judge of the District Court of the United States, for the District of Oregon, and the subsequent order and decree

made and rendered on the 21st day of May, 1915, against this petitioner by the Hon. Robert S. Bean, Judge of the District Court of the United States, for the District of Oregon, says:

That D. Sondheim, the bankrupt herein, is indebted to this petitioner in the sum of more than \$4000.00; that on November 16, 1914, a petition in involuntary bankruptcy was filed against the said D. Sondheim, in the District Court of the United States, for the District of Oregon; that on the 20th day of November, 1914, R. L. Sabin, as receiver, filed a petition in said District Court of the United States, for the District of Oregon, requesting that this petitioner be required to deliver to him as receiver, or to the Trustee hereinafter to be elected, a certain stock of merchandise in the possession of this petitioner; that thereafter said stock of merchandise, pursuant to a stipulation entered into between this complainant and the receiver, was sold and the proceeds realized therefrom in the sum of \$3476.76 were deposited with this petitioner to abide the decision of the Court as to the ownership of said property; that thereafter the petition and the answer of this petitioner were referred to A. M. Cannon, Esquire, as Special Master, to hear the parties therein and take such evidence as might be desired to be introduced as to the rights of the parties to the property or its proceeds, and to report his findings to the Court; that thereafter said A. M. Cannon, as Special Master, duly took said evidence

and made and filed his findings and recommendations wherein he recommended that such order or decree be entered as would restore to the Trustee, the funds representative of the property in controversy; that thereafter your petitioner filed exceptions to the report of the Special Master, which exceptions were overruled and the orders under date of May 17 and May 21, 1915, hereinabove complained of, entered; that upon the record herein your petitioner contended in said District Court, and he now contends in this Court:

First. That under the agreement entered into between this petitioner and the bankrupt and the understanding and intention of the parties as shown by the testimony developed at the hearing before the Special Master, the title to the said stock of goods remained in the bank and that in any view of the agreement, a trust was created, and your petitioner is entitled to hold said goods until his indebtedness has been repaid.

Second. That if the agreement be regarded as a chattel mortgage it is valid under the laws of the State of Oregon, and the fact that your petitioner had possession of the property before the lien of any creditor attached, and before the petition in bankruptcy was filed, cures the failure to record it or acknowledge it so as to entitle it to record.

Third. That with respect to property not in the custody of the bankruptcy court the Trustee is

simply vested with the rights, remedies and powers of a judgment creditor, holding an execution duly returned unsatisfied, and since neither any creditors of the bankrupt nor the Trustee himself secured any lien upon this personal property, it follows that the Trustee could insist upon no greater rights in the stock of goods than D. Sondheim, the bankrupt, had.

That on May 17, 1915, said judge rendered an oral opinion in this cause holding that the agreement with D. Sondheim did not create a trust; that the said agreement was void as to creditors under the laws of the State of Oregon; that the possession of the stock of merchandise availed your petitioner nothing and that the Trustee had jurisdiction to question the agreement in controversy, and there was made and entered on said date in said District Court and in this cause, an order and decree, a copy of which is hereto attached and marked Exhibit "A" overruling your petitioner's exceptions to the report of the Special Master, and that on the 21st day of May an order and decree was made and entered in said District Court in this cause, a copy of which is hereto attached and marked Exhibit "B"; that said orders of the District Court were erroneous in matters of law, because:

1. They overruled the exceptions of your petitioner to the Special Master's report.

2. They failed to sustain the exceptions of your petitioner to the Special Master's report.

3. They confirmed the report of the Special Master and further ordered that this bank pay to the Trustee the sum of \$1000.43, and the costs and disbursements of the proceeding.

4. They confirmed the report of the Special Master holding the agreement in controversy did not amount to a contract of conditional sale or create a trust.

5. They confirmed the report of the Special Master holding the agreement in controversy void as a chattel mortgage under the laws of the State of Oregon.

6. They confirmed the report of the Special Master holding that the possession of the property by this bank prior to a levy by any creditor and prior to the filing of the petition in involuntary bankruptcy did not entitle this bank to hold said goods until its indebtedness was repaid.

7. They confirmed the report of the Special Master holding that the Trustee could question this conveyance.

WHEREFORE, your petitioner feeling aggrieved because of such orders and decrees, asks that the same may be revised in a matter of law by the Honorable Court as provided in Section 24b of the bankruptcy law of 1898, and the rules and practice in such case provided.

SCANDINAVIAN-AMERICAN BANK,
a Corporation.

UNITED STATES OF AMERICA,)
State and District of Oregon,) ss.
Multnomah County,)

Anthon Eckern makes oath and says that he is cashier of the Scandinavian-American Bank, a corporation, petitioner above named, and the foregoing petition for revision and review is true as he verily believes.

ANTHON ECKERN.

Subscribed and sworn to before me this 29th day of May, 1915.

O. C. BORTZMEYER,
Notary Public for Oregon.

(Seal)

(Internal Revenue Stamp, 10c, Cancelled.)

(Exhibit A referred to in the foregoing petition is the order of Court filed May 17, 1915, and is on page 71 of this record. Exhibit B referred to in the foregoing petition is the decree filed on May 21, 1915, and is on page 72 of this record.)